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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,757	09/17/2001	Katsuhiko Kumakura	10059-397US (P22089-03)	8993

570 7590 11/29/2002

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
ONE COMMERCE SQUARE, SUITE 2200  
2005 MARKET STREET  
PHILADELPHIA, PA 19103

EXAMINER
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PICKETT, JOHN GREGORY

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/936,757

Applicant(s)

KUMAKURA ET AL.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 1,2,4-7 and 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the partition of claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "22" in figure 5 has been used to designate both an upper flap on the left sidewall and an upper flap on the right sidewall. Reference character 131 has been used to designate both a bottom wall piece and a base.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities: Page 11, line 15, axe appears to be a typographical error. Appropriate correction is required.

### ***Claim Objections***

4. Claims 1-2, 4-7, and 14-16 are objected to because of the following informalities: The applicant uses inconsistent terminology in reference to the "square-tubular case". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2, and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, "said unit package" renders the claim indefinite since plural unit packages are defined in claim 1.

Regarding claim 14, it is indefinite whether the "base having a top surface which is inclined" is separate from or part of the single sheet. Further, it is indefinite as to whether an additional lid is claimed by the applicant.

Regarding claim 15, it is indefinite as to whether one or plural first base forming portions are claimed. Further, it is indefinite as to whether an additional lid is claimed by the applicant.

Regarding claim 16, it is indefinite as to which unit package placed on the top surface of the bottom is taken out of the outlet since multiple unit packages can be arranged on the top surface of the bottom.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-2, and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss (US 5,836,478) in view of Carlson et al. (US 5,460,322), Snyder et al. (US 4,030,596), and Briggs (2,385,400).

Regarding claim 1:

Weiss discloses a dispensing package comprising a case 10 with an opening on an upper part of the case (Figure 1), lid 12, a bottom (Figure 1), and extracting outlet 16. Weiss teaches a package for dispensing a wide range of batteries with a varying number of units held in the dispenser (Figures 6-8).

Weiss does not disclose a square-tubular case.

Carlson et al. discloses a dispensing package with a square-tubular case. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the case of Weiss with a square-tubular cross-section as taught by Carlson et al. in order to accommodate batteries of differing sizes.

Weiss as modified by Carlson et al. does not teach a top surface of the bottom inclined with the front side lower than the rear side.

Snyder et al. discloses a dispensing package with a top surface of the bottom inclined with the front side lower than the rear side. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the case of Weiss and Carlson et al. with an inclined bottom as taught by Snyder et al. in order to accurately and consistently position the contained articles in the extracting outlet.

Weiss as modified by Carlson et al. and Snyder et al. does not teach an extracting outlet on the sidewall of the case.

Briggs discloses a dispensing package with an extracting outlet on the sidewall of the case. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the case of Weiss, Carlson et al., and Snyder et al. with an extracting outlet on the sidewall of the case as taught by Briggs in order to strengthen front wall 14 when a large number of batteries are stored in the case.

As to claim 2, Weiss anticipates the storage of a plurality of batteries aligned in parallel with the front wall.

As to claim 4, Weiss has a bottom surface with which the case can stand independently.

As to claim 5, Carlson et al. discloses a case with a suspending piece and Weiss suggests the hanging from a display rod (Col. 2, ln 47-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the case of Weiss, Carlson et al., Snyder et al., and Briggs with a suspending piece as taught by

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Carlson et al. and suggested by Weiss in order to display the dispensing package on a sales rack in a retail outlet.

As to claim 6, the case of Weiss is transparent (Col. 2, ln 50-53).

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss, Carlson et al., Snyder et al., and Briggs as applied to claim 1 above, and further in view of Eisendrath (US Des. 302,949).

Weiss, Carlson et al., Snyder et al., and Briggs disclose a case as applied to claim 1 above. Weiss, Carlson et al., Snyder et al., and Briggs do not disclose a partition.

Eisendrath discloses a dispensing package with a partition. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the case of Weiss, Carlson et al., Snyder et al., and Briggs with a partition as taught by Eisendrath in order to add weight to the top of the articles being dispensed to assist in forcing the articles into the extracting outlet.

#### ***Allowable Subject Matter***

8. Claim 15 would be allowable over the currently presented prior art if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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9. Claim 16 would be allowable over the currently presented prior art if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schoenefeld (US 3,450,308) discloses a dispensing package made from a folding blank with an inclined bottom. Novak (US 2,299,027) discloses a dispensing package made from a folded blank with a tear strip forming the extracting outlet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

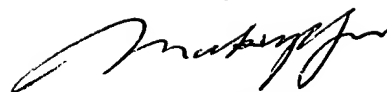
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



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Gregory Pickett  
Examiner  
November 22, 2002

A handwritten signature in black ink, appearing to read 'Mickey Yu', is positioned above the printed name.

Mickey Yu  
Supervisory Patent Examiner  
Group 3700